

AMENDED IN SENATE JUNE 2, 2003

AMENDED IN SENATE MAY 12, 2003

SENATE BILL

No. 269

Introduced by Senator Soto

February 18, 2003

An act to add Section 22212.5 to the Education Code, and to amend Section 20098 of the Government Code, relating to public employees' retirement, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 269, as amended, Soto. Public employees' retirement: manager compensation.

Existing law authorizes the Board of Administration of the Public Employees' Retirement System to appoint and fix the compensation of an executive officer, assistant executive officer, and other necessary employees. Existing law also authorizes the Teachers' Retirement Board to appoint a chief executive officer and other employees as are necessary to administer the *State Teachers' Retirement System*.

This bill would authorize those retirement boards to appoint and fix the compensation of, according to specified principles, an executive officer, an actuary, investment officers, *and* portfolio managers, ~~and other necessary employees, as specified~~. The bill would specify that those positions, when filled through a civil service appointment, *shall be filled from an eligible list, as specified*, and would be subject to the provisions of existing law establishing the tenure of managerial employees under state civil service. The bill would make related findings and declarations.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Section 17 of Article XVI of the California Constitution
4 provides that—~~the retirement~~ the “*retirement* board of a public
5 pension or retirement system shall have the sole and exclusive
6 fiduciary responsibility over the assets of the public pension or
7 retirement system. The retirement board shall also have sole and
8 exclusive responsibility to administer the system in a manner that
9 will assure prompt delivery of benefits and related services to the
10 participants and their beneficiaries. The assets of a public pension
11 or retirement system are trust funds and shall be held for the
12 exclusive purposes of providing benefits to participants in the
13 pension or retirement system and their beneficiaries and defraying
14 reasonable expenses of administering the system.”

15 (b) In order to permit the Board of Administration of the
16 ~~California~~ Public Employees’ Retirement System and the
17 Teachers’ Retirement Board to exercise their fiduciary
18 responsibility pursuant to Section 17 of Article XVI of the
19 California Constitution, the Department of Personnel
20 Administration established certain senior executive positions and
21 investment management positions at both *retirement* systems that
22 were exempt from civil service, and subsequently delegated
23 authority to the Board of Administration and the Teachers’
24 Retirement Board to establish additional exempt positions and
25 determine the compensation paid to those employees pursuant to
26 compensation policies established by the respective boards.

27 (c) The Court of Appeal for the Third District of California, in
28 *Westly v. Board of Administration* (Feb. 25, 2003, C039686)
29 _____ Cal.App. 4th _____ [2003 Cal.App. Lexis 271], held that,
30 notwithstanding Section 17 of Article XVI of the California
31 Constitution, Article VII of the California Constitution limited the
32 number of—~~California~~ Public Employees’ Retirement System
33 positions that may be exempt from civil service to only one

1 employee selected by the Board of Administration, and that
2 compensation paid to employees was subject to the authority of the
3 Department of Personnel Administration.

4 (d) The continued ability of the Board of Administration and
5 the Teachers' Retirement Board to meet their fiduciary obligation
6 to their members requires that they be able to attract and retain
7 employees in key senior executive and investment management
8 positions with compensation that is consistent with the
9 compensation paid to employees in other public retirement and
10 financial service organizations.

11 (e) The express purpose of this act is to enable the Board of
12 Administration and the Teachers' Retirement Board to attract and
13 retain key personnel by empowering those boards to establish both
14 appropriate classifications within the civil service for its senior
15 executive and investment management employees and the
16 compensation paid to those employees, competitive with the
17 compensation paid to employees in other retirement and financial
18 service entities, consistent with the holding of *Westly v. Board of*
19 *Administration*, and notwithstanding the provisions of the
20 Government Code that provide the State Personnel Board and the
21 Department of Personnel Administration that authority.

22 SEC. 2. Section 22212.5 is added to the Education Code, to
23 read:

24 22212.5. (a) This section shall apply to the following
25 positions in the system: chief executive officer, system actuary,
26 chief investment officer, and other investment officers and
27 portfolio managers whose positions are designated managerial
28 pursuant to Section 18801.1 of the Government Code.

29 (b) Notwithstanding Sections ~~19825~~ 19816, 19825, and 19826
30 of the Government Code, the board shall fix the compensation for
31 the positions specified in subdivision (a). In so doing, the board
32 shall be guided by the principles contained in Sections 19826 and
33 19829 of the Government Code, consistent with its fiduciary
34 responsibility to its members to recruit and retain highly qualified
35 and effective employees for these positions.

36 (c) When a position specified in subdivision (a) is filled
37 through a general civil service appointment, it shall be filled from
38 an eligible list based on an examination that was held on an open
39 basis, and tenure in those positions shall be subject to the
40 provisions of Article 2 (commencing with Section 19590) of

Chapter 7 of Part 2 of Division 5 of Title 2 of the Government Code. In addition to the causes for action specified in that article, the board may take action under the article for causes related to its fiduciary responsibility to its members, including the employee's failure to meet specified performance objectives.

SEC. 3. Section 20098 of the Government Code is amended to read:

20098. (a) The board shall appoint and, notwithstanding Sections ~~19825~~ 19816, 19825 and 19826, shall fix the compensation of an executive officer, a chief actuary, a chief investment officer, and other investment officers, ~~portfolio managers, and other necessary employees~~ and portfolio managers whose positions are designated managerial pursuant to Section 18801.1.

(b) The executive officer, deputy executive officers, and the assistant executive officers may administer oaths.

(c) When fixing the compensation for the positions specified in subdivision (a), the board shall be guided by the principles contained in Sections 19826 and 19829, consistent with its fiduciary responsibility to its members to recruit and retain highly qualified and effective employees for these positions.

(d) When a position specified in subdivision (a) is filled through a general civil service appointment, *it shall be filled from an eligible list based on an examination that was held on an open basis, and* tenure in the position shall be subject to the provisions of Article 2 (commencing with Section 19590) of Chapter 7 of Part 2 of Division 5 of Title 2. In addition to the causes for action specified in that article, the board may take action under the article for causes related to its fiduciary responsibility to its members, including the employee's failure to meet specified performance objectives.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to resolve any uncertainty regarding the employment status of key employees of the Public Employees' Retirement System and the Teachers' Retirement System and to thereby enable those systems to carry out their fiduciary responsibilities to

- 1 hire and retain qualified individuals in those key positions, it is
- 2 necessary that this act take effect immediately.

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